

EXHIBIT B

1
2 SUPREME COURT OF THE STATE OF NEW YORK
3 COUNTY OF NEW YORK - CIVIL TERM: PART 23

4 PRINCE FASHIONS, INC.,

Plaintiff,

5 -against-

6 60G 542 BROADWAY OWNER, LLC,

7 Defendant.

8 INDEX NO. 651255/2016

9 NEW YORK SUPREME COURT

10 60 CENTRE STREET

11 NEW YORK, NEW YORK

JUNE 30, 2016

12 B E F O R E:

13 THE HONORABLE RICHARD F. BRAUN, Justice

14 A P P E A R A N C E S:

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16 HERRICK, FEINSTEIN, LLP
17 Attorneys for the Plaintiff
18 Two Park Avenue
19 New York, New York 10016
20 BY: JOHN P. SHERIDAN, ESQ.

21 COLE SCHOTZ
22 Attorneys for the Defendant
23 1325 Avenue of the Americas
24 New York, New York 10018
25 BY: NICOLE G. MCDONOUGH, ESQ.

26 William Cardenuto
Senior Court Reporter

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2 THE COURT: This is a motion before this Court
3 on this date, and I also will be putting on the record my
4 opinions on two motions that were submitted on June 30th,
5 2016. No. That's wrong. Let me see the dates on those
6 motions. That's May 12th, 2016.

7 Appearances starting with the plaintiff's
8 counsel.

9 MR. SHERIDAN: Good morning, your Honor. John
10 P. Sheridan, Herrick, Feinstein, Two Park Avenue, New
11 York, New York, 10016, 212-592-1510, for the plaintiff,
12 Prince Fashions, Inc.

13 MS. MCDONOUGH: Good morning, your Honor.
14 Nicole McDonough from Cole Schotz, PC, 1325 Avenue of the
15 Americas, 19th Floor, New York, New York, 201-525-6208.
16 Thank you. For the defendants, your Honor, I apologize,
17 60G 542 Broadway Owner, LLC.

18 THE COURT: So, the front of your card lists
19 your New Jersey office. I did see on the back of your
20 card it does say New York. So, your firm does have a New
21 York office; correct?

22 MS. MCDONOUGH: Yes. That's correct, your
23 Honor, at 1325 Avenue of the Americas.

24 THE COURT: Under the judiciary law, you cannot
25 appear in our courts in New York state unless you or your
26 firm has an office in New York state or you reside in New

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York state. As to the current motion on today, I understand you wish to submit without oral argument. That's fine.

There appears to be duplicate copies of the two submitted orders to show cause. I'll give you those papers, and if there are duplicates, take the shorter one, the one that doesn't have the affirmation exhibits, and give back to my court officer the ones that have the affirmation exhibits.

MR. SHERIDAN: If your Honor, please, there are two separate orders to show cause.

THE COURT: Right. And there are two copies of each, it appears. I only want one of each. So, if there are duplicates, take back the duplicates, and give the originals to my court officer.

MR. SHERIDAN: I believe -- oh, I see what you're saying. I'm sorry.

THE COURT: Knowing you were coming in today, I stayed late last night and read over yesterday and decided yesterday one of the two motions, and the other one I'll be deciding in a few minutes. I signed my decision and order on the one yesterday, and I will sign the other one in a few minutes. I will now be putting my opinion on the record in support of those decisions and orders.

There is an action for a declaratory judgment in

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relation to commercial premises brought by a commercial tenant, a plaintiff against a commercial landlord, the defendant. The defendant was the purchaser of the condominium that owns the commercial space that the plaintiff leases. The building is a cooperative. The ownership at issue is apparently a condop. The plaintiff moved separately for two Yellowstone injunctions.

In Graubard, Mollen, Horowitz, Pomeranz and Shapiro v. 600 Third Avenue Associates, 93 NY2d 508 at 514, 1999, the court said the following: "The party requesting Yellowstone injunction must demonstrate that, one, it holds a commercial lease; two, it received from the landlord either a notice of default, a notice to cure or a threat of termination of a lease; three, it requested an injunctive relief prior to the termination of the lease; and four, it's prepared and maintains the ability to cure the alleged default by any means short of vacating the premises."

The dispute in the first order to show cause is basically in relation to the fourth prong of the factors to obtain a Yellowstone injunction. The Court does not need to reach the issue in deciding these motions as to the argument raised by the plaintiff in disputing the defendant is its landlord; see BRT Realty Trust v. Preferred Entity Advancement, 233 AD2d 200, First

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Department, 1996, in which the court said, "The determination regarding the validity of the assignment of the net lease is premature. Contentions regarding the validity of the assignment must await trial. The limited prima facie requirements for the Yellowstone injunction were met."

The only issue raised in the notice of default that is argued to be at issue here is in relation to the failure of a plaintiff to obtain on behalf of the defendant liability insurance for the subject premises. The defendant received title to the subject premises by a deed in May 2015, and there was an assignment and assumption by the defendant. Those are exhibits A and B respectively.

The plaintiff was required to have liability insurance and did not do so for the entire period starting with when the defendant first became the owner and landlord of the subject premises. The plaintiff cites to liability insurance that was covering the predecessor owner, but only includes one of the policies, and it has a certificate of insurance for that policy and for another policy, but does not include a submission of the earlier policy which is pursuant to the certificate of insurance dated November 21st, 2014. The policy which is submitted is for the certificate of insurance dated November 21st --

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hold on a second. Actually, it's not for the other certificate of insurance either. The policy issue date is October 14th, 2015, and it says on the second page, policy period, November 28th, 2015, November 28th, 2016.

The plaintiff, of course, has to show its entitlement to the Yellowstone injunction by its proof, the plaintiff's proof. The plaintiff does not show that the sublessee had a policy insurance covering the gap period from when the defendant took over title to the premises in May of 2015 until the date of your sublessee's insurance as just cited. The plaintiff had a responsibility to have such insurance. The defendant was at risk for any claims made during that period, although I suppose its possible that an insurance company could write a policy after the period going back in time to cover claims that could have been made and/or occurrences for the earlier period. There's no proof that the plaintiff obtained such a policy.

The fact that the prior owner might have accepted a subtenant's performance in lieu of a tenant's does not bind the defendant for the period after which the defendant took title to the policy. The fact that the plaintiff later acquired insurance that does not cover the gap period is a deficiency and a default on the policy. The Appellate Division, First Department, has made it

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clear that the failure to have insurance as required is a default that is not curable. Therefore, the Court will not issue the first Yellowstone injunction sought and that motion is denied.

As to the second one, the defendants correctly argue that the demand for lease deliverables is not a notice of default or notice to cure. It would appear to be preliminary to such a notice. The demand by letter dated April 8th, 2016, demands that the plaintiff do certain things by a date stated for those items, that being April 25th, 2016. It further says, "Please, be advised that failure by principal to finally comply with each of the aforementioned demands shall constitute a default pursuant to Article 17 of the lease, thus entitling the owner to exercise all available rights and remedies." That would include the service of a notice of default if the demand for lease deliverables was not complied with. This demand is a predicate to that. Therefore, any request now for a notice for a Yellowstone injunction is premature as that demand for notice of default or notice cure is based on that demand. That would be the point at which possibly a request for a Yellowstone injunction would be appropriate. Therefore, that motion was denied by this Court's decision and order of yesterday.

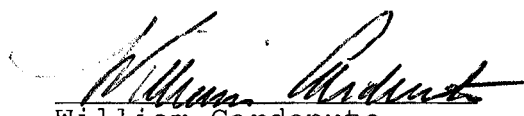
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I will be signing my decision and order on the other motion which I spoke of first in a few minutes. That concludes this Court's opinion on the record.

(End of proceedings.)

It is hereby certified that the foregoing is a true and accurate transcript of the proceedings.


William Cardenuto
Senior Court Reporter